Supreme Court, U. S.
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MICHAEL RODAK, JR., CLERK

No. 78-40

IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

WESTERN OIL & GAS ASSOCIATION, ET AL.,
Petitioners,

v.

STATE OF ALASKA, ET AL.,
Respondents.

PETITIONERS' MEMORANDUM SUGGESTING THAT THE CAUSE IS MOOT

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On July 6, 1978, the Western Oil and Gas Association and eleven of its members (WOGA) filed a petition for a writ of certiorari to review a portion of a decision rendered on February 28, 1978, by the United States Court of Appeals for the District of Columbia Circuit. That petition dealt exclusively with part II-C of the court of appeals' opinion, in which it interpreted Section 5 of the Outer Continental Shelf (OCS) Lands Act of 1953, 43 U.S.C. § 1334, as vesting the Secretary of the Interior with discretion to issue oil and gas leases for OCS tracts which could be cancelled for environmental reasons, without payment of compensation to the lessee. This interpretation of the OCS Lands Act led the court of appeals to reverse the district court on this point, while affirming it on most others. The court of appeals went on to issue a declara-

tory judgment that, in order to comply with the National Environmental Policy Act, 42 U.S.C. § 4231 (NEPA), the Secretary should in the future consider the issuance of such terminable leases as an "alternative" to the non-terminable leases which he had consistently issued in the past.[1]

While WOGA's petition was pending in this Court, Congress adopted many substantial amendments to the OCS Lands Act. Among the provisions in the new legislation is one amending Section 5 of the OCS Lands Act to direct the Secretary to issue regulations providing for the cancellation of OCS leases for environmental reasons, albeit with a requirement that, when leases are so cancelled, the government must pay lessees compensation pursuant to a formula outlined in the Act.[2] This legislation was signed by President Carter on September 18, 1978.

On September 5, 1978, anticipating President Carter's signature of the amendments, the State of Alaska filed a typewritten submission with the Court arguing that the passage of the OCS Lands Act amendments makes the issue raised in WOGA's petition moot. The State further argued that the mootness of the petition required that it be denied. (See App. 1a).

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[1] As WOGA pointed out in its petition (pp. 9-10), the court of appeals did not apply this interpretation of NEPA to invalidate the Secretary's decision to issue non-terminable leases for the OCS sale then under review. Instead, the lower court confined this aspect of its NEPA ruling to a purely prospective declaratory judgment regarding the Secretary's conduct of future OCS sales.

[2] A copy of Section 204 of the Amendments, which revises Section 5 of the 1953 Act, was attached to the Memorandum for the Secretary of the Interior filed by the Solicitor General in this case on September 29.

On September 18, the date of the President's signature of the amendments, WOGA filed a typewritten response to Alaska's September 5 submission. (See App. 3a). In WOGA's September 18 submission, it agreed that the case was moot, but disagreed that its petition should be denied. Instead, WOGA argued that the practice in this Court in such cases is to grant the petition, vacate the mooted aspects of the judgment, and remand for dismissal of the portion of the complaint which gives rise to the mooted issue.

On September 29, the Solicitor General filed a memorandum with this Court on behalf of the Secretary of the Interior, a defendant-appellee below, agreeing with the conclusions expressed in WOGA's September 18 submission.

On October 2, undersigned counsel for WOGA was contacted by the Clerk of this Court and informed that, since Alaska's September 5 typewritten submission was not being circulated to the Court, WOGA's September 18 response would similarly not be circulated. The Clerk stated that, if WOGA wished to make its views as to the mootness question known to this Court, it should file a printed brief with respect to this question. This memorandum is accordingly now being filed with the Court.

There is no question but that, as all parties now agree, the issue presented in WOGA's petition is moot. Under the new legislation, the Secretary must now provide for terminable leases. That being the case, the court of appeals' declaratory judgment that the Secretary must in the future consider the use of such leases as an "alternative" to the issuance of non-terminable leases is of no force or effect.

This Court's consistent practice in federal litigation that has been rendered moot during the pendency of a certiorari petition is to grant the petition, vacate the judgment of the court of appeals, and remand the case to the district court for dismissal of that portion of the complaint which has been rendered moot. *See, United States* v. *Munsingwear,* 340 U.S. 36 (1950); R. Stern and E. Gressman, *Supreme Court Practice* § 18.3, at 593-94 (4th ed. 1969).

Thus, this Court should now grant WOGA's petition, vacate part II-C of the opinion below, and remand the case to the United States District Court for the District of Columbia for dismissal of paragraph 37(j) of the plaintiffs' complaint.

Respectfully submitted,

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October 6, 1978

APPENDIX

APPENDIX

JAY S. HAMMOND, GOVERNOR

DEPARTMENT OF LAW
OFFICE OF THE ATTORNEY GENERAL

POUCH K STATE CAPITOL
JUNEAU, ALASKA 99311

September 5, 1978

Mr. Michael Rodak, Jr.
Clerk
Supreme Court of the United States
Office of the Clerk
Washington, D.C. 20543

Re: Western Oil and Gas Assn.
v. State of Alaska, No. 78-40

Dear Mr. Rodak:

Pursuant to Supreme Court Rule 24(3), respondent State of Alaska waives its right to file a responsive brief to the brief in support of petition for writ of certiorari filed on July 6, 1978. Comprehensive amendments to § 5(a)(1) of the Outer Continental Shelf Lands Act ("OCS Act) (43 U.S.C. § 1334(a)(1)), as written by the conference committee, have now passed both houses of Congress. 9 Bureau of National Affairs, Environment Reporter Current Developments 698 (August 25, 1978). The conference bill's amendments to § 5(a) are reprinted at 124 Cong. Rec. H. 8370 (daily ed. August 10, 1978). Because the petition for certiorari centers on the issue of whether § 5(a) of the OCS Act allows the Department of Interior to issue oil and gas leases with a clause allowing termination of the

leases for environmental reasons—an issue resolved by § 204 of the conference bill—the matter is now clearly moot, and the petition is thus without merit.

Sincerely,

/s/ AVRUM M. GROSS
Avrum M. Gross
Attorney General

AMG:JKT:dlm

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STATE OF ALASKA, *et al.*,
Respondents.

Petitioners' Memorandum in Response to Suggestion That the Cause Is Moot

Petitioners herein respond to the September 5, 1978, letter of the Attorney General of the State of Alaska to the Clerk of the Court.

On July 6, 1978, the Western Oil and Gas Association and eleven of its members (WOGA) filed a petition for a writ of certiorari to review a decision rendered on February 28, 1978 by the United States Court of Appeals for the District of Columbia Circuit. That petition dealt exclusively with part II-C of the court of appeals' opinion, in which it interpreted Section 5 of the Outer Continental Shelf (OCS) Lands Act of 1953, 43 U.S.C. § 1334, as vesting the Secretary of the Interior with discretion to issue oil and gas leases for OCS tracts which could be cancelled for environmental reasons, without payment of compensation to the lessee. This interpretation of the OCS Lands Act led the

court of appeals to reverse the district court and to issue a declaratory judgment that, in order to comply with the National Environmental Policy Act, 42 U.S.C. § 4231 (NEPA), the Secretary should in the future consider the issuance of such terminable leases as an "alternative" to the non-terminable leases which he had consistently issued in the past.[1]

While WOGA's petition was pending in this Court, Congress adopted the amendments to the OCS Lands Act referred to in the Alaska Attorney General's September 5 letter. Among the many provisions in the new legislation is one amending Section 5 of the OCS Lands Act to direct the Secretary to issue regulations providing for the cancellation of OCS leases for environmental reasons, albeit with a requirement that when leases are so cancelled the government must pay lessees compensation pursuant to a formula outlined in the Act.[2] The legislation was signed by President Carter on September 18, 1978.

The State of Alaska argues that the passage of the OCS Lands Act amendments makes the issue raised in WOGA's petition moot. The State further argues that the mootness of the petition requires that it be denied.

We do not disagree with the State of Alaska's claim that the issue raised in the petition is now moot. Under

[1] As WOGA pointed out in its petition (pp. 9-10), the court of appeals did not apply this interpretation of NEPA to invalidate the Secretary's decision to issue non-terminable leases for OCS Sale No. 39. Instead, the lower court confined this aspect of its NEPA ruling to a purely prospective declaratory judgment regarding the Secretary's conduct of future OCS sales.

[2] A copy of Section 204 of the Amendments, which revises Section 5 of the 1953 Act, is attached hereto.

the new legislation, the Secretary must now provide for terminable leases. That being the case, the court of appeals' declaratory judgment that the Secretary must consider the use of such leases as an "alternative" to the issuance of non-terminable leases is of no force or effect.

We do disagree with the State of Alaska, however, as to the proper disposition of WOGA's petition in the light of the mootness of this cause. This Court's consistent practice in federal litigation that has been rendered moot during the pendency of a certiorari petition is to grant the petition, vacate the judgment of the court of appeals, and remand the case to the district court for dismissal of that portion of the complaint which has been rendered moot. *See, United States* v. *Munsingwear,* 340 U.S. 36 (1950); R. Stern and E. Gressman, *Supreme Court Practice,* § 18.3, at 593-94 (4th ed. 1969).

Thus, this Court should now grant WOGA's petition, vacate part II-C of the opinion below, and remand the case to the United States District Court for the District of Columbia for dismissal of paragraph 37(j) of the plaintiffs' complaint.

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September 18, 1978